

**REMARKS/ARGUMENTS**

The proposed amendments to the claims presented hereinabove are submitted to place the instant application in condition for allowance. The proposed amendments are necessary and were not earlier presented because it was believed, for reasons noted in Applicant's last response filed July 27, 2005, that amended independent claim 10 submitted with that response, in and of itself, clearly patentably defined over the cited prior art reference of Dirksen, et al. (U.S. Patent No. 6,853,975, "Dirksen"). At that time, Applicants believed (and still believe) that the amended claim language of claim 10 was not only supported by Applicants' specification, but clearly served to distinguish the present invention from Dirksen. However, in a bona fide and diligent effort to place the instant application in condition for allowance and in adherence to principles of compact prosecution, Applicant has chosen to amend claim 10 to substitute the contested claim language with terminology that finds explicit support in Applicants' specification.

More particularly, claims 10, 16 and 17 have been modified to delete the phrase "but has not been nominated to review" and insert in its stead the phrase "but is not obligated to review." See, for example, Applicants' specification at page 3, first complete paragraph, page 4, second complete paragraph, page 5, second paragraph, the brief description of FIG. 14 on page 7, page 11, second complete paragraph, page 22, first complete paragraph, paragraph "c" bridging pages 23 and 24, page 27, third paragraph, page 29, third paragraph, and the Abstract.

As a consequence of these changes, Applicants believe the newly raised rejections of claims 10-18 under 35 U.S.C 112, ¶¶ (1) and (2) raised in the Final Office Action have been rendered moot. Withdrawal of those rejections is therefore respectfully requested.

At several locations throughout the Final Office Action the Examiner asserted: "In light of the specification, and for purposes of examination, the claims are construed to mean that a user is not obligated to review the performance of another person just because the person is listed for potential review." (emphasis added). At the first of those instances (the final sentence of the paragraph bridging pages 2 and 3 of the Final Office Action), the Examiner followed that statement with: "Prior rejections under Dirksen are upheld, but modified to reflect the new understanding of the claims." These statements serve as the foundation for the Examiner's rejections of claims 10-14 and 16-18 under 35 U.S.C. § 102 ¶¶ (a) and (e) as being anticipated by Dirksen and of claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Dirksen.

A unique aspect of the present invention is that it permits persons (reviewers) who desire to review the job performance of other persons (reviewees) to do so without obligation to do so. That is, persons who have not been chosen by a reviewee to review the reviewee may nonetheless do so if they so desire. This capability is expressly set forth in amended claim 10 wherein it is stated: "selecting, by a user of the system, a person whose employment performance the user desires to review but is not obligated to review." A substantial advantage

afforded by this feature is that it permits individuals who may have substantial knowledge of a person's employment performance, e.g., colleagues from within and outside of a person's employment department, from providing input that may be useful in evaluating that person even if the reviewee had not selected those persons to review his or her performance. Dirksen is utterly silent as to this unique functionality.

What the Examiner fails to appreciate is that Dirksen enables reviewees to select their reviewers but does not permit reviewers to select their reviewees. In this respect Dirksen is no different than the commercially available 360° Feedback® and the Visual 360® so-called "360°" employee review systems discussed at length in the "Background of the Invention" section of Applicants' specification.

The Examiner has unyieldingly relied upon column 4, lines 55-61 of Dirksen as basis for her belief that Dirksen discloses the unique limitation of Applicants' independent claim 10 which now reads: "selecting, by a user of the system, a person whose employment performance the user desires to review but is not obligated to review." That passage from Dirksen is reproduced below (with emphasis added).

Once the rater nominations have been submitted and approved by a manager, the approved raters may initiate the rating process. However, the approved raters must first complete the previously described training process prior to initiating the rating process. Once the training process is completed, the rater may enter the rating system, and referring to

FIG. 16, the rater may select from screen 124 the name 126, 128 of the person he or she wishes to rate.

The Examiner's rendering of this passage is skewed because it is taken out of the remaining context of the Dirksen patent. With due respect, the Examiner does not appear to appreciate the significance of the underscored portion of the foregoing passage. It is the ratees (reviewees) who first nominate or select raters (reviewers) to review the ratees' performance. See Dirksen at column 1, lines 50-53; column 2, lines 8-11 and the Abstract. The nominees are then approved or disapproved by a ratee's manager. See Dirksen at column 1, lines 53-54; column 3, lines 8-24. These are conventional steps already performed by conventional "360°" employee review systems.

Following management approval of selected raters, the nominated raters are obligated to rate all of the ratees for whom they have been approved to rate.

Turning to FIG. 21, screen 166 signifies the end of the ratings process, and box 168 is provided for submitting optional comments regarding the employee being rated. In screen 170 of FIG. 22, all ratings may be submitted by selecting box 172, thus completing the duties of the rater.

Dirksen at column 5, lines 12-16 (double emphasis added).

It is quite clear from the foregoing that the nominated rater is duty-bound or obligated to review only the ratees who have nominated him or her to do so. A rater cannot independently select other persons to review.

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Nowhere does Dirksen expressly or impliedly disclose or suggest that potential raters have the choice to review persons who have not nominated them for review. Indeed, what Dirksen does teach is conventional and the antithesis of that specifically called for in Applicants' independent claim 10.

Accordingly, since Dirksen does not and cannot perform the novel method for conducting an employee performance review program defined in amended independent claim 10, it is respectfully requested that the outstanding Section 102 (a and e) rejection of that claim and its dependent claims 11-18 be withdrawn.

The prior art cited of interest has been considered but is not believed to be any more relevant to the claimed invention than the Dirksen patent discussed above.

The proposed amendments raise no new issues or new matter that would require further search and/or consideration by the Examiner.

The proposed amendments also materially reduce and/or simplify the issues for appeal and, as such, they are submitted to place the application in better form for appeal.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

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If, however, the Examiner remains of the opinion that the proposed amendments to the claims do not place the application in condition for allowance, then it is kindly requested that they be entered for purpose of appeal.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: January 12, 2006

  
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